BEFORE THE HON'BLE HIGH COURT OF C.G. AT BILASPUR

W.P.NO. 1123/2002

Petitioner - Gaindlal Kannoje aged 60 years
S/o Late Mansukh lal Kannoje
Retired FGC, Qtr.No. 24/42
Civil Line, Durg (C.G.).

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Versus.

Respondent - 1) State Govt.of C.G.
Through - The Secretary
Revenue Deptt. B.K.S. Bhawan,
RAIPUR (C.G.).

2) The Collector,
Durg (CG).

3) Shri K.K.Agrawal,
Dy.Collector, DURG (CG).

Writ petition under Article 226/227 of the Constitution of India.

AGR

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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION NO. 1123 of 2002

GAINDLAL KANNOJE

VERSUS

STATE GOVT. OF CHHATTISGARH & OTHERS

O R D E R

Post for 17 **.08.2005**

Sd/-
Sunil Kumar Sinha
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION NO. 1123 of 2002

GAINDLAL KANNOJE

VERSUS

STATE GOVT. OF CHHATTISGARH & OTHERS

Shri Ajay Shrivastava, counsel for the petitioner.
Shri G.K. Beriwal, Dy. Advocate General for the State.

O R D E R
(17-08-2005)

SUNIL KUMAR SINHA, J.

(1) A short but important question arises for consideration as to when does a disciplinary enquiry is said to have been instituted for the purposes of its continuation under Rule 9 of the M.P. (C.G.) Civil Services (Pension) Rules, 1976 (for short Rules) after the superannuation of the employee ?

(2) The brief facts are that the petitioner was working as an Assistant Grade-II in District Office, Durg. He retired on 30.09.2001 on completion of the age of superannuation. Before the retirement, he was under suspension since 24.09.2001 but his suspension was revoked on 29.09.2001. On 02.01.2002, i.e. after his retirement, he was served with a charge-sheet and

an enquiry officer was appointed to conduct a disciplinary enquiry against him. The petitioner has challenged the validity of this enquiry and has prayed for quashing of the same. He has also prayed for necessary directions to the respondents to release his all retrial benefits along with the interest.

(3) Learned counsel for the petitioner submits that since the petitioner had retired on 30.09.2001, no departmental enquiry can be initiated against him on 02.01.2002 vide annexure-P/2 as the petitioner ceases to be an employee after his superannuation on 30.09.2001 and the State had no right to deal with him in its disciplinary jurisdiction. He also submits that the departmental enquiry is said to have been instituted on the date when the charge-sheet is served upon the employee and even the pension rules referred to above, does not permit for continuation of a departmental enquiry after the superannuation, when the enquiry itself has been instituted after the retirement of the employee.

(4) On the other hand, learned Dy. Advocate General submits that prior to the retirement of the petitioner on 30.09.2001, he was suspended on 24.09.2001 in contemplation of the enquiry, therefore, in fact, the enquiry was instituted on the date of his suspension prior to the date of retirement and the same can be continued under Rule 9 of the aforesaid rules.

(5) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(6) Regarding the controversy raised in this writ petition, sub-rule 2 (a) of Rule 9 of the pension rules is important. This sub-rule provides that the departmental proceedings, if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to

be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in his service. A proviso has also been given to this rule that where the departmental proceedings are initiated by an authority subordinate to the Governor, that authority shall submit a report regarding his findings to the Governor. Sub-rule (b) of this rule further provides that the departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment, then sanction of the Governor would be necessary. After bare perusal of these two sub-rules of Rule 9 it would be clear that those departmental proceedings can be continued under this rule which are instituted prior to the superannuation of the government servant and if the proceedings are not instituted prior to the superannuation, then they shall not be instituted after the superannuation unless a sanction from Governor is obtained.

(7) If we examine the present case, in light of the above rules, it would appear that it is not the case of the State that the departmental proceedings against the petitioner are being drawn with the sanction of the Governor. Learned Dy. Advocate General has contended that since the proceedings were instituted on 24.09.2001 when the petitioner was suspended, therefore, they shall be deemed to be the proceedings under sub-rule 2 (a) of Rule 9 and the State has an authority to continue with the same and to come to a definite finding under the said rule.

(8) Whether the suspension of the petitioner on 24.09.2001 shall amount to institution of a departmental proceeding against him and the proceedings shall be allowed to continue after the superannuation of the petitioner is the question raised.

(9) Sub-rule 6 of Rule 9 is quoted as under:-

> *"(6) For the purpose of this rule-*
>
> *(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and*
>
> *(b) judicial proceedings shall be deemed to be instituted-*
>
> *(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and*
>
> *(ii) In the case of civil proceedings, on the date the plaint is presented in the court."*

(10) Sub-rule 6 (a), as indicated above, provides that in normal course for the purposes of rule 9, the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant but if the Government servant is placed under suspension from an earlier date, then it shall be deemed to be instituted on such date. The word on such date means the date on which the Government servant was placed under suspension. Therefore, in the present case, the date of institution of the departmental proceedings against the petitioner for the purposes of rule 9 shall be deemed to be the date on which the petitioner was placed under suspension i.e. on 24.09.2001.

(11) Hence, the answer to the question raised is that the disciplinary enquiry is deemed to have been instituted for the purposes of its continuation after the superannuation of the employee under rule 9 of the rules, on the date of issuance the statement of charges, in the normal course, but if the Government servant is placed under suspension, then on the

date of his suspension which in the case of the petitioner is on 24.09.2001. Therefore, his departmental proceedings can be continued even after his superannuation.

(12) In light of the above facts and circumstances of the case, since the departmental proceedings of the petitioner shall be deemed to have been instituted on 24.09.2001 i.e. prior to the date of superannuation, therefore, these proceedings cannot be quashed and the same shall be allowed to continue as it shall be deemed to the proceedings under rule 9 (2) (a) of the aforesaid Rules, 1976.

(13) The other argument raised by learned counsel for the petitioner relying on the decision rendered in the matter of **C.L. Verma –Vs- State of M.P., A.I.R. 1990 SC, 463** that the petitioner was retired on 30.09.2001, therefore, no departmental proceedings can be instituted against him by issuing a charge-sheet on 02.01.2002, cannot be sustained because the ratio of this decision is not applicable in the present case. In the said case, the Chief Municipal Officer was superannuated and thereafter, he was subjected to departmental proceedings on a set of charges and in the said situation, the Apex Court has held that when the petitioner was already superannuated, the Government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The aforesaid decision is distinguishable, because in the present case, the enquiry was already instituted prior to the superannuation. This argument cannot be accepted and the same is rejected.

(14) On the basis of foregoing discussions, I do not find any merit in the writ petition and the same is dismissed. No costs.

Sd/-
Sunil Kumar Sinha
Judge

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